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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

The Pay Telephone Reclassification and )  
Compensation Provisions of the )  
Telecommunications Act of 1996 )

CC Docket No. 96-128

RBOC/GTE/SNET Payphone Coalition )  
Petition for Clarification )

NSD File No. L-99-34

**ONE CALL COMMUNICATIONS, INC.**  
**PETITION FOR WAIVER**

One Call Communications, Inc. ("One Call") hereby requests a partial waiver of the per-call payphone compensation requirements established in the Commission's Second Order on Reconsideration in the above-captioned proceedings ("*Second Reconsideration Order*").<sup>1</sup> The new rules: (1) require interexchange carriers ("IXCs") routing interexchange payphone calls to One Call and other resellers to pay per-call payphone compensation to payphone service providers ("PSPs") for such calls; and (2) allow such IXCs to obtain reimbursement for these compensation payments from One Call and the other resellers to whom the calls were routed. The new rules also permit resellers and other carriers, in the alternative, to pay payphone compensation directly to PSPs pursuant to contractual arrangements.

**A. Introduction**

Unlike virtually all other resellers of interexchange services to payphone users, One Call is a facilities-based operator service provider ("OSP") that has contractual payphone compensation arrangements with numerous independent PSPs (*i.e.*, PSPs not affiliated with local exchange carriers ("LECs")). It also can track all completed calls originating from each PSP's

<sup>1</sup> Second Order on Reconsideration, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, 16 FCC Rcd 8098 (2001) ("*Second Reconsideration Order*").

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payphones and thereby derive the proper amount of payphone compensation that should be paid to each PSP. The underlying IXC's routing payphone calls to One Call and other resellers, on the other hand, have no ability to track those calls or to calculate the proper amount of payphone compensation to be paid to PSPs for such calls. As One Call demonstrates below, these special circumstances justify a partial waiver of One Call's payphone compensation reimbursement obligations.

One Call seeks a partial waiver of its obligation to reimburse IXC's for their payphone compensation payments to PSPs because certain IXC's have threatened to apply the new payphone compensation requirements set forth in the *Second Reconsideration Order* improperly. Specifically, certain IXC's have indicated that they intend to seek reimbursement from One Call for their payphone compensation payments to PSPs that One Call already compensated directly pursuant to its contractual arrangements with those PSPs, thereby undermining such arrangements. Moreover, the IXC's have stated that, because of their inability to track calls, they will have to take actions that would impose vastly inflated payphone compensation reimbursement obligations on One Call. Notably, some of these problems would be aggravated if the Commission were to grant the petitions for reconsideration of the *Second Reconsideration Order* filed by some of the IXC's, and One Call is opposing those petitions. As One Call explains below, however, denial of those petitions will not resolve the issues addressed in this petition for waiver.

In addition to denying the IXC's' petitions, it will be necessary for the Commission to take further steps in order to prevent duplicative or excessive reimbursement claims. In particular, One Call should not be required to reimburse IXC's for payphone compensation that they have paid to PSPs unless such IXC's follow the coordination procedure that One Call proposes herein. This coordination procedure would ensure that IXC's acknowledge One Call's contractual payment arrangements with PSPs and that they limit their requests to One Call for reimbursement to the proper amount of payphone compensation established in the *Payphone*

*Orders*.<sup>2</sup> The cost savings that would result from such relief would be in the public interest and would further the goals of the *Payphone Orders*.

## **B. Background**

One Call provides operator and interexchange services to more than 150,000 payphones across the United States. One Call provides these services through its own switches on a resale basis to certain independent payphones. Resale service typically involves a One Call customer dialing One Call's access code at an independent payphone presubscribed to another IXC, which then routes the call to One Call.<sup>3</sup> Prior to the *Second Reconsideration Order*, any switched-based reseller that had identified itself as the "responsible party" for payphone compensation had been required to pay per-call payphone compensation to PSPs for coinless payphone calls routed to it by a facilities-based IXC pursuant to the *Payphone Reconsideration Order*<sup>4</sup> and the *Coding Digit Waiver Order*.<sup>5</sup> Alternatively, carriers were permitted to negotiate compensation arrangements with PSPs.<sup>6</sup>

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<sup>2</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecomm. Act of 1996*, Report and Order, 11 FCC Rcd 20541 (1996) ("*Payphone Classification Order*"); Order on Reconsideration, 11 FCC Rcd 21233 (1996) ("*Payphone Reconsideration Order*"), *aff'd in part and remanded in part sub nom. Ill. Public Telecomm. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), *cert. denied sub nom. Va. State Corp. Comm'n v. FCC*, 523 U.S. 1046 (1998); Second Report and Order, 13 FCC Rcd 1778 (1997), *aff'd in part and remanded in part sub nom. MCI v. FCC*, 143 F. 3d 606 (D.C. Cir. 1998); Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (1999) ("*Third Payphone Order*"), *aff'd sub nom. American Public Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000).

<sup>3</sup> This issue does not arise at LEC-owned payphones because One Call provides interexchange service at such payphones solely as the underlying carrier, not on a resale basis.

<sup>4</sup> 11 FCC Rcd at 21277.

<sup>5</sup> *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 13 FCC Rcd 10893, 10915-16 (1998) ("*Coding Digit Waiver Order*").

<sup>6</sup> See 47 C.F.R. § 64.1300(a).

Among carriers that provide interexchange resale service to payphones, One Call's widespread contractual arrangements with PSPs and its ability to track calls are virtually unique. These characteristics stem from the fact that, historically, One Call provided most of its payphone-related services not as a reseller but as the underlying OSP at payphones. The nature of such service required One Call to structure its operations to serve not only its own end user customers, but also the independent PSPs that selected it as the presubscribed interexchange carrier ("PIC") and contracted with it as the OSP for their payphones.<sup>7</sup> As the OSP, One Call always had to track and bill for all of the calls it handled. Thus, One Call has had ongoing contractual arrangements with many independent PSPs and systems in place that can track all of the calls that it carries, whether as a reseller or as the underlying OSP.

In the case of most other resellers, however, particularly prepaid calling card providers, resale services constitute their entire payphone-related businesses, and they have no ongoing business relationships with PSPs or call tracking systems. As a result, many PSPs were not receiving appropriate payphone compensation for calls routed to such resellers.

In order to address this problem, the *Second Reconsideration Order* now requires the first underlying facilities-based IXC, rather than the reseller, to compensate the PSP for all completed coinless calls. The *Second Reconsideration Order* also requires the underlying IXC to track or arrange for the tracking of calls routed to a reseller to determine whether they are completed and therefore compensable and provide to the PSP a statement of the number of coinless calls the IXC receives from each of that PSP's payphones. The *Second Reconsideration Order* provides that each reseller to whom coinless payphone calls are routed by the dialing of the reseller's number must reimburse the underlying IXC for the amount of per-call compensation paid by the IXC to each PSP for such calls and for the IXC's cost of tracking the calls and providing such information to the PSP. This requirement is codified at Section 64.1310(b) of the Commission's

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<sup>7</sup> At most independent payphones, PSPs no longer select a PIC, but One Call has continued its business relationships with many independent PSPs. At LEC payphones, One Call has a relationship (typically through an agent) with the location owner, rather than with the PSP.

rules.<sup>8</sup> Finally, the *Second Reconsideration Order* also permits carriers and PSPs to continue making alternative compensation arrangements under contract.

**C. Special Circumstances Justify A Partial Waiver Of One Call's Reimbursement Obligations In Order To Promote More Efficient Payphone Compensation Procedures**

Waiver of Commission rules is permitted upon a showing of “good cause.”<sup>9</sup> Such a showing requires a demonstration that “special circumstances warrant a deviation from the general rule and that such a deviation will serve the public interest.”<sup>10</sup> Here, a partial waiver of One Call’s obligation under Section 64.1310(b) to reimburse IXC’s for payphone compensation that they have paid to PSPs is necessary in order to ensure that IXC’s will honor the compensation arrangements between One Call and PSPs that are permitted by the *Second Reconsideration Order*. Moreover, where One Call does not have such contractual compensation arrangements in place, a partial waiver of its reimbursement obligations is necessary to ensure that it does not suffer injury as a result of the IXC’s inability to track payphone calls that they route to One Call. Accordingly, One Call can demonstrate that “special circumstances” justify a waiver, as more fully explained below, and the savings to be realized by such relief would benefit the public interest.

**1. One Call Should Not Be Required To Reimburse IXC’s For Payphone Compensation Payments to PSPs That One Call Has Compensated Under Contract**

As noted above, One Call, unlike most resellers, has negotiated direct compensation arrangements with numerous PSPs. Although the *Second Reconsideration Order* explicitly permits those arrangements to continue in place, certain IXC’s have indicated, both in petitions for reconsideration of the *Second Reconsideration Order* and in discussions with One Call, that

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<sup>8</sup> 47 C.F.R. § 64.1310(b).

<sup>9</sup> 47 C.F.R. § 1.3.

<sup>10</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990)(citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)).

they will place burdensome administrative obstacles in the way of any attempt by One Call to claim that it already has paid compensation directly to PSPs under its contractual arrangements. Those IXC's will demand reimbursement from One Call for per-call compensation that they have paid to the same PSPs for the same calls if One Call cannot satisfy their requirements.<sup>11</sup> By forcing One Call to pay double payphone compensation in this manner, these IXC's effectively are nullifying One Call's compensation contracts with the PSPs. Moreover, denial of the IXC's petitions will not have any effect on these informal administrative requirements.

In order to prevent such duplicative compensation obligations, the Commission should excuse One Call from its reimbursement obligations if it certifies that it has paid compensation to a PSP pursuant to contract. Such relief would require IXC's to honor One Call's compensation arrangements, thereby furthering the goals of the *Second Reconsideration Order*. Accordingly, IXC's should be required to coordinate with One Call before paying payphone compensation to PSPs for calls routed to One Call in order to determine whether One Call can certify that it already is paying compensation directly to such PSPs under contractual arrangements.

**2. Irrespective Of Contractual Arrangements With PSPs, One Call Should Not Be Required To Reimburse IXC's For Excessive Payphone Compensation Payments**

A partial waiver of One Call's reimbursement obligations also is necessary where One Call does not have a direct payphone compensation arrangement with a PSP. Unless otherwise agreed between the PSP and the carrier, per-call compensation is set at \$0.24 per completed call, which requires that carriers accurately track the number of completed payphone calls they carry for each PSP.<sup>12</sup> As conceded by certain IXC's in their petitions for reconsideration, however, they

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<sup>11</sup> See Declaration of Ann C. Bernard at 2-3 (Oct. 8, 2001) ("Bernard Declaration"), attached hereto. See also Petition for Reconsideration and Clarification at 10-11, Global Crossing Telecommunications, Inc. (May 29, 2001).

<sup>12</sup> 47 C.F.R. § 64.1300(c).

are utterly unable to track payphone calls routed to switch-based resellers.<sup>13</sup> Call tracking is essential to determine the correct amount of per-call compensation to be paid to each PSP and to fulfill the IXC's reporting obligations. The IXCs request that, in light of their inability to track calls, they be permitted to pay per-call compensation based on the assumption, which AT&T admits is "incorrect," that all calls routed to resellers are completed, and thus compensable, and then seek reimbursement for such compensation from the resellers.<sup>14</sup> One Call's completion rate for payphone calls, however, is only about 20-30 percent.<sup>15</sup> Because the approach sought by the IXCs would allow per-call payphone compensation to be paid as if the completion rate were one hundred percent, the resulting level of compensation for such calls would vastly exceed \$0.24 per completed call. The IXCs then would demand reimbursement from One Call for such excess compensation.

Significantly, this problem also would not be resolved by the denial of the IXCs' petitions. The IXCs argue that if the Commission refuses to allow them to pay compensation based on the assumption that every payphone call routed to a reseller is completed, and to demand reimbursement for the resulting excessive compensation, they will have no choice but to deploy the systems necessary to track and report calls routed to switch-based resellers and to pass the tremendous costs of such systems on to the resellers, as permitted by the *Second Reconsideration Order*.<sup>16</sup> Thus, whether or not the IXCs' petitions for reconsideration are granted, they intend to take steps that will greatly increase the cost of payphone calls routed to resellers, necessitating the waiver relief sought here.

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<sup>13</sup> See, e.g., AT&T Petition for Clarification and/or Reconsideration at 3-4 (May 29, 2001) ("AT&T Pet.").

<sup>14</sup> *Id.*

<sup>15</sup> See Bernard Declaration.

<sup>16</sup> AT&T Pet. at 3-4.

Less costly, wasteful alternatives to the choices presented by the IXC's should and can be implemented to ensure the correct amount of payphone compensation in cases where One Call does not have a contractual compensation arrangement with a PSP. In the case of calls routed to One Call, there is an inexpensive alternative, namely, the coordination process proposed above. In addition to checking whether One Call has a direct payphone compensation arrangement with a PSP, the IXC's should use such a coordination process to secure One Call's assistance in determining the necessary call data for each PSP with which it does not have a contractual compensation arrangement. As explained above, One Call has the necessary systems in place to track all payphone calls routed to it. One Call is prepared to provide each underlying IXC with the necessary data for all completed calls originated by each PSP that are delivered to that IXC and routed to One Call. The underlying IXC's thus could fulfill all of their obligations under the *Second Reconsideration Order* as to payphone calls routed to One Call at no cost to themselves by obtaining the tracking and reporting information they need from One Call. A partial waiver excusing One Call from its reimbursement obligation unless an IXC coordinates with One Call to determine the correct payphone compensation to be paid to each PSP thus would achieve efficiency benefits and serve the public interest.

Accordingly, One Call requests that the Commission grant a partial waiver of Section 64.1310(b) of its rules excusing One Call from the requirement that it reimburse an IXC for per-call compensation that the IXC has paid a PSP for calls routed to One Call when: (1) such IXC, prior to its payment of such compensation, failed to coordinate in good faith with One Call in order to determine whether One Call compensates the PSP directly under contract or, in cases where it has no such contract, in order to obtain the call data necessary to determine the correct compensation to be paid to the PSP and to fulfill its reporting obligations; or (2) such IXC coordinated in good faith with One Call, but One Call certified that it compensates the PSP directly pursuant to contract; or (3) One Call provided the required call data during the coordination process, but the reimbursement requested by the IXC is inconsistent with the data provided by One Call. Without this prior coordination requirement, IXC's will have no



constraints on the level of their per-call compensation payments to PSPs, knowing all the while that Commission rules allow them to recover fully from One Call.

**3. One Call Should Not Be Required To Reimburse IXCs Under Any Circumstances For The Costs Of Deploying Call Tracking Capabilities**

Irrespective of any coordination procedure, the Commission also should grant One Call an unconditional waiver in all circumstances from any compensation reimbursement obligations reflecting or arising from any IXC's costs of developing its own tracking and reporting system. Because One Call is willing to track and provide all necessary data concerning all coinless payphone calls routed to it, it should not bear any portion of an IXC's deployment costs for a system that, in the case of calls routed to One Call, would be entirely redundant.

By ensuring that IXCs honor One Call's payphone compensation contracts with PSPs and by promoting the IXCs' utilization of One Call's tracking abilities, One Call's requested relief will help to ensure the payment of the correct compensation amounts for calls routed to One Call and thus prevent duplicative compensation payments or unnecessary increases in compensation payments, which would inflict a tremendous financial burden on One Call and its end users. The requested waiver will minimize costs, thereby furthering the public interest in efficiency, the payphone compensation goals of the *Payphone Orders* and the goal of Section 276(b)(1) of the Communications Act -- to "promote the widespread deployment of payphone services to the benefit of the general public."<sup>17</sup>

**D. Conclusion**

In light of One Call's payphone compensation arrangements with numerous PSPs, its ability to track payphone calls routed to it by IXCs and the IXCs' inability to do so, the public interest would benefit substantially from One Call's proposed coordination procedure and the other efficiencies that would result from the relief sought here. Denial of such relief not only would be grossly unfair to One Call, but also inevitably would result in unnecessary increases in


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<sup>17</sup> 47 U.S.C. § 276(b)(1).

7. The expanded payphone compensation obligations that will result from the duplicative and excessive reimbursement demands of the IXCs will impose a crushing financial burden on One Call and its customers. Not only is a cost increase of this magnitude unfair to the end users who depend on payphones, but it also will cripple One Call's ability to compete against the large IXCs in the already shrinking payphone operator services market, ultimately leading to yet additional rate increases.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of October, 2001.

  
Ann C. Bernard

## CERTIFICATE OF SERVICE

I, James S. Bucholz, do hereby certify that the foregoing Opposition of One Call Communications Inc. was served on this 9th day of October, 2001, by U.S. mail, first-class postage prepaid, on

Carmell Weathers  
Network Services Division  
Common Carrier Bureau  
Federal Communications Commission  
445 12th Street, S.W. -- Room --B153  
Washington, D.C. 20554

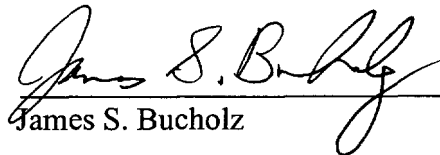
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James S. Bucholz

the reimbursement demanded of One Call by IXC's, including reimbursement for the costs of installing call tracking systems, which would be financially burdensome to One Call and its end users. One Call accordingly submits that it has demonstrated good cause for a partial waiver of Section 64.1310(b) of the Commission's rules.

Respectfully submitted,

By: Cheryl A. Tritt (FLK)  
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Counsel for One Call Communications, Inc.

Dated: October 9, 2001

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
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The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128
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	)	
RBOC/GTE/SNET Payphone Coalition Petition for Clarification	)	NSD File No. L-99-34
	)	
	)	

**DECLARATION OF ANN C. BERNARD**

Ann C. Bernard deposes and says as follows:

1. My name is Ann C. Bernard. I am Corporate Counsel to One Call Communications, Inc. ("One Call"). I submit this Declaration in support of : (1) One Call's Petition for Waiver and (2) its Opposition to Petitions for Reconsideration and Petition for Declaratory Ruling, filed herewith, relating to the per-call payphone compensation requirements established in the Commission's Second Order on Reconsideration in the above-captioned proceedings ("*Second Reconsideration Order*"). I am knowledgeable about One Call's operations and have responsibility for all matters relating to One Call's regulatory requirements, including One Call's payphone compensation obligations. Accordingly, I have been involved in ongoing discussions with various interexchange carriers ("IXCs") concerning the regulatory payphone compensation requirements applicable to payphone calls routed by IXCs to One Call.

2. One Call serves as the presubscribed operator service provider ("OSP") at payphones throughout the United States. One Call provides these services through its own switches on a resale basis to certain independent payphones (*i.e.*, payphones owned by payphone service providers ("PSPs") not affiliated with local exchange carriers ("LECs")). Resale service typically involves a One Call customer dialing One Call's

access code at an independent payphone presubscribed to another IXC, which then routes the call to One Call. Prior to the *Second Reconsideration Order*, a switched-based reseller such as One Call that had identified itself as the “responsible party” for payphone compensation had been required to pay per-call payphone compensation to PSPs for coinless payphone calls routed to it by a facilities-based IXC. Alternatively, carriers were permitted to negotiate compensation arrangements with PSPs.

3. Unlike almost all other resellers of interexchange services to payphone users, One Call is a facilities-based OSP that has contractual payphone compensation arrangements with numerous independent PSPs. One Call also can track all completed calls originating from each PSP’s payphones that are routed to it and thereby derive the proper amount of payphone compensation that should be paid to each PSP for such calls. Among carriers that provide interexchange resale service to payphones, One Call’s widespread contractual arrangements with PSPs and its ability to track calls are virtually unique. Historically, One Call provided most of its payphone-related services not as a reseller but as the underlying OSP at payphones. The nature of such service required One Call to structure its operations to serve not only its own end user customers, but also the independent PSPs that selected it as the presubscribed interexchange carrier and contracted with it as the OSP for their payphones. As the OSP, One Call always tracked and billed for all of the calls it handled.

4. Although the *Second Reconsideration Order* explicitly permits contractual payphone compensation arrangements between resellers and PSPs to continue, certain IXCs have indicated, both in petitions for reconsideration of the *Second Reconsideration Order* and in recent conversations with me, that they will place burdensome administrative requirements on any attempt by One Call to claim that it already has paid compensation directly to PSPs under its contractual arrangements. Those IXCs will

demand reimbursement from One Call for per-call compensation that they have paid to the same PSPs for the same calls if One Call cannot satisfy their onerous requirements.

5. Moreover, as conceded by certain IXC's in their petitions for reconsideration, they cannot track payphone calls routed to switch-based resellers. Because per-call payphone compensation, in the absence of an agreement providing otherwise, is based on the number of completed calls, call tracking is essential to determine the correct amount of per-call compensation to be paid to each PSP. The IXC's request that, in light of their inability to track calls, they be permitted to pay per-call compensation based on the assumption that all calls routed to resellers are completed, and thus compensable, and then seek reimbursement for such compensation from the resellers.

6. One Call's completion rate for payphone calls is much lower. In the case of a "0+" call, *i.e.*, a call placed by dialing a "0" followed by other numbers, operator intervention is required, either to take billing information for a call billed to a calling card, credit card or other number or to ask the called party whether he or she is willing to take a collect call. These processes often take a minute or longer and in most cases result in incompleting calls, for a variety of reasons. For example, there may be a billing problem, or the calling party ultimately chooses not to make the call, or the called party refuses to accept a collect call. Accordingly, One Call's completed call rate is approximately 20%-30% of all toll calls handed off to it. Thus, surrogate measures -- such as an assumption that a call is completed if it lasts longer than 25 seconds or some other short period of time after it is handed off to One Call -- overstate the number of completed calls carried by One Call. Moreover, the IXC's assumption that all payphone calls routed by IXC's to One Call are completed vastly overstates the number of completed calls and thus would multiply the payphone compensation that is due for calls routed to One Call by three to five times the amount that is legally required.